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June 29, 2007

FILED/ACCEPTED

JUN 29 2007

Federal Communications Commission
 Office of the Secretary

VIA HAND DELIVERY

Marlene H. Dortch
 Secretary, Office of the Secretary
 Federal Communications Commission
 445 12th Street, S.W.
 Washington, D.C. 20554

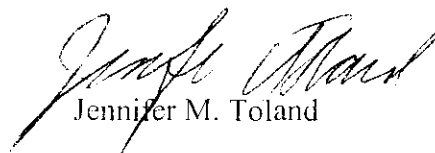
Re: *Petition of Cequel III Communications I, LLC for Waiver from EAS Requirements*

Dear Secretary Dortch:

Enclosed for filing is an original, one Stamp & Return copy, and four copies of the Petition for Waiver for Cequel III Communications I, LLC from the Commission's Emergency Alert System Requirements ("Petition") for two of its cable systems. Also, in conjunction with the Petition is an original and four copies of a request that the petition be withheld from public inspection pursuant to 47 C.F.R. § 0.459.

If you have any questions regarding this filing, please contact the undersigned at (202) 973-4200.

Sincerely,


 Jennifer M. Toland

Enclosures

cc: Derek Poarch, Chief, Public Safety and Homeland Security Bureau

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED

JUN 29 2007

Federal Communications Commission
Office of the Secretary

In the Matter of)	
)	
Petition for Waiver of the Commission's)	FO Docket No. 91-301
Emergency Alert Requirements for)	FO Docket No. 91-171
Cable Television Systems)	

To: Marlene Dortch, Secretary
Office of the Secretary

**REQUEST THAT MATERIALS SUBMITTED TO THE COMMISSION BE
WITHHELD FROM PUBLIC INSPECTION**

Pursuant to 47 C.F.R. § 0.459, Cequel III Communications I, LLC ("Cequel") d/b/a as Suddenlink Communications¹, respectfully requests that the information being submitted in its latest Petition for Waiver from the Commission's Emergency Alert System ("EAS") Requirements for Cable Television Systems, not be made routinely available for public inspection. Since financial information and other proprietary information about Cequel is interspersed throughout, it is not feasible to separate the confidential information from the non-confidential information.

The EAS petition contains highly sensitive business and financial information about the operations of Cequel. This includes proprietary subscriber information and general financial background information. Cequel has not previously disclosed this information to the public or to third parties who are not fiduciaries or held to confidentiality arrangements. Cequel has taken

¹ Prior to July 2006, Suddenlink Communications was doing business as Cebridge Connections.

extensive measures to avoid disclosure of the confidential information to third parties, both through employee confidentiality agreements and by limiting access only to key personnel.

If disclosed, the information would likely cause substantial competitive injury to Cequel. As explained in the Petition for Waiver from the EAS requirements, Cequel faces significant competition from DBS providers. Those DBS providers could use the information to their advantage to target Cequel's customers.²

The FCC's public disclosure regulations implement, and incorporate, Exemption 4 of the Freedom of Information Act, 5 U.S.C. §552(b)(4), and the Trade Secrets Act, 18 U.S.C. § 1905. *See* 47 C.F.R. §0.457(c)(5) and (d). Under Exemption 4, information is exempt from public disclosure if it is (1) commercial or financial in nature, (2) obtained from a person, and (3) privileged or confidential in nature. 5 U.S.C. §552(b)(4). The information covered by this request is exempt from public disclosure under Exemption 4 of the FOIA and the FCC's regulations because it constitutes commercial and financial information, obtained from a person, which is confidential in nature.³

² For example, Echostar previously directed a campaign to target the customers of a cable operator who was experiencing financial difficulty, warning the subscribers that the cable operator was about to go out of business and advising them that they would lose video programming unless they signed with Echostar's Dish Network. Monica Hogan, *Rural Weakness? DBS Merger Roils Small Ops' World*, Multichannel News (Jan. 21, 2002) at http://www.findarticles.com/cf_0/m3535/3_23/82626449/print.jhtml.

³ Under Exemption 4 of the FOIA, the terms "commercial" and "financial" are to be given their "ordinary meaning", and thus include information in which a submitter has a "commercial interest." *Public Citizen Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983); *accord, Washington Research Project, Inc. v. HEW*, 504 F.2d 238, 244 n.6 (D.C. Cir. 1974), *cert. denied*, 421 U.S. 963 (1975). "Commercial interest" has been interpreted broadly to include anything "pertaining or relating to or dealing with commerce." *American Airlines, Inc. v. National Mediation Bd.*, 588 F.2d 863, 870 (2d Cir. 1978). The term "person", for FOIA purposes, includes entities such as Cebridge. *See, e.g., Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 830 F.2d 871 n.15 (D.C. Cir. 1987) ("For FOIA purposes a person may be a partnership, corporation, association, or public or private organization other than an agency"). Where submission of information is mandatory,

Similarly, Section 1905 of Title 18 of the United States Code makes it unlawful for federal government agencies or employees to disclose information relating to "the trade secrets, processes, operations, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association ..." Information that is exempt from release under Exemption 4 of the FOIA is *prohibited* from being disclosed, under 18 U.S.C. § 1905, unless disclosure is "authorized by law" by another statute other than the FOIA.⁴ Because no other statute authorizes the release of the information at issue here, disclosure of the Documents is prohibited by the criminal provisions of 18 U.S.C. §1905.⁵

The foregoing demonstrates, by a preponderance of the evidence (*see* 47 C.F.R. § 0.459(d)(2)), that the information at issue is confidential within the meaning of Exemption 4 of the FOIA and the rules of the Federal Communications Commission, and that disclosure is prohibited by 18 U.S.C. §1905. Cequel therefore requests that the submitted information be deemed confidential, that the FCC prohibit their public disclosure or inspection, and that Cequel be informed of the FCC's determination on this issue.

This petition presents only a preliminary explanation of the bases for this request for confidential treatment. It would be unduly burdensome at this time to provide a more detailed and particularized justification on a page-by-page basis, when it is not presently known whether

information is confidential or privileged under Exemption 4 if, among other things, disclosure is likely to cause substantial harm to the competitive person from whom the information was obtained. *Judicial Watch, Inc. v. Export-Import Bank*, 108 F. Supp. 2d 19, 28-29 (D.D.C. 2000) (citing *Critical Mass*, 975 F.2d at 878). As explained above, disclosure is likely to cause competitive harm.

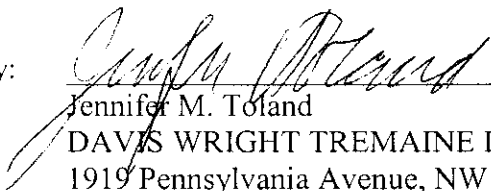
⁴ *See Chrysler Corp. v. Brown*, 441 U.S. 281 (1979) (Exemption 4 and 18 U.S.C. § 1905 are "coextensive", and §1905 prohibits the disclosure of confidential business information unless release is authorized by a federal statute other than the FOIA); *see also* 47 C.F.R. § 0.457(c)(5) and (d).

public disclosure of the information will be sought. Accordingly, we request that, in the event a request for disclosure of any of these documents is received by the FCC, Cequel be provided with notice of, and an opportunity to object to, any such request prior to release of the Documents. *See* 47 C.F.R. § 0.459(d)(1). Additionally, Cequel requests that the information remain confidential and upon the Commission's determination of the EAS petition, it be returned to Cequel. If the Commission has any questions regarding this petition, please contact the undersigned at the address below.

Respectfully submitted,

Cequel III Communications I, LLC
d/b/a Suddenlink Communications

By:


Jennifer M. Toland

DAVIS WRIGHT TREMAINE LLP
1919 Pennsylvania Avenue, NW – Suite 200
Washington, DC 20006
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June 29, 2007

⁵ *See CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1151 (D.C. Cir. 1987).

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	FO Docket No. 91-301
Petition for Waiver of the Commission's)	FO Docket No. 91-171
Emergency Alert Requirements for)	
Cable Television Systems)	
 To: Marlene H. Dortch, Secretary Office of the Secretary		

**PETITION FOR WAIVER FROM
EMERGENCY ALERT SYSTEM REQUIREMENTS**

I. Introduction

This petition is submitted on behalf of Cequel III Communications I, LLC ("Cequel") d/b/a Suddenlink Communications¹ to request for two of its cable systems temporary waivers from compliance with the Emergency Alert System ("EAS") requirements in Section 11.11(a) of the Commission's rules. The subject cable systems are located in Auburn Valley, CA and Verdi, NV. Each system has 65 or fewer subscribers. Indeed, the Auburn Valley system is one of Cequel's very smallest systems and has only 7 subscribers. Bringing these very small systems into compliance with the Commission's EAS requirements would cause significant financial hardship to Cequel and undermine the already precarious economic viability of these systems.

On February 27, 2006, Cequel filed with the Commission a Petition for Waiver from EAS requirements ("February 2006 Petition for Waiver") for twenty four of its smallest systems on financial hardship grounds. On July 3, 2006, the Enforcement Bureau issued a Public Notice

¹ Prior to July 2006, Suddenlink Communications was doing business as Cebridge Connections ("Cebridge"), as reflected in its Petition for Waiver filed on February 27, 2006.

granting a 1 year waiver, until June 30, 2007, to 12 of these systems.² The Bureau denied Cequel's request for waivers for the other 12 systems on the basis that Cequel failed to demonstrate that it would suffer undue financial hardship from complying with the Commission's rules.³ In the twelve months since the Bureau issued its Public Notice, Cequel sold 22 of the 24 systems for which it originally requested waivers. It retains ownership only of the Auburn Valley and Verdi systems.

II. Cequel's Systems Meet the Criteria for EAS Waivers⁴

A. Cequel Will Suffer Financial Hardship if Required to Comply with the Requirements in Section 11.11(a)

In its Public Notice, the Bureau noted that, although EAS waivers should be limited to the extent possible, immediate imposition of EAS requirements on some of the smaller cable

² *EAS Waiver Extensions Granted to Very Small Cable Systems*, Public Notice, DA-06-1373, 2006 FCC LEXIS 3671 (released July 3, 2006) (hereafter "Public Notice"). The Commission granted waivers for systems located in Auburn Valley, CA; Canyon, ID; Culdesac, ID; Harrison, ID; Murray, ID; Riggins, ID; Westport, OR; Almira, WA; Chinook Pass, WA; Malaga, WA; Royal City, WA; and Wilson Creek, WA.

³ Public Notice at 3. The Commission denied waivers for systems located in Avery, ID; Koosia, ID; Prichard, ID; Verdi, NV; Knappa, OR; Chattaroy, WA; Coulee City, WA; Davenport, WA; Diamond Lake, WA; Mattawa, WA; Orcas Island, WA; and Wilbur, WA.

⁴ *See Amendment of Part 7 of the Commission's Rules Regarding the Emergency Broadcast System*, Second Report and Order, 12 FCC Rcd 15503 (1997). *See also Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order, EB Docket No. 0166, RM-9156, RM-9215; ¶ 73 (rel. Feb. 26, 2002) (underscoring that the Commission "will continue to grant waivers of the EAS rules to small cable systems on a case-by-case basis upon a showing of financial hardship"). In the 2002 Report and Order, the Commission reiterated the information that must be contained in the waiver request: "(1) justification for the waiver, with reference to the particular rule sections for which a waiver is sought; (2) information about the financial status of the requesting entity, such as a balance sheet and income statement for the two previous years (audited, if possible); (3) the number of other entities that serve the requesting entity's coverage area and that have or are expected to install EAS equipment; and (4) the likelihood (such as proximity or frequency) of hazardous risks to the requesting entity's audience." *Id.*

systems could “cause significant economic hardship.”⁵ Bringing Cequel’s two very small systems into immediate compliance simply is not economically feasible. (See financial information in **Attachment A**). The financial position of the systems is unimproved since Cequel filed its February 2006 Petitions for Waiver.⁶ Indeed, their financial position is precarious at best, as both these systems continue to lose subscribers. (See **Attachment B**.)

The requirement of full EAS compliance by July 1, 2007 would result in serious financial hardship to Cequel. Cequel estimates that the cost of an EAS system for each cable system headend would be approximately \$8,000.00 per headend. This estimate is consistent with the FCC’s cost estimates of \$6,000 to \$10,000 per headend, as outlined in the FCC’s 1997 Report and Order, *Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System*, Second Report and Order, 12 FCC Rcd. 15503, ¶ 23 (rel. Sep. 29, 1997). However, contrary to what the FCC believed at the time of the Second Report and Order, the anticipated equipment cost reductions that would render compliance for small cable systems less burdensome has not materialized (even with the availability of decoder-only units). *Id.* at ¶ 25.

The prices for equipment and installation would impose significant per-subscriber costs on Cequel’s smallest systems, which are already struggling with ever increasing programming costs. To pay for the equipment, Cequel would need to consider rate increases to its subscribers. The additional costs and the rate increases to cover such costs would only serve to further erode

⁵ Public Notice at 2.

⁶ Cequel does not maintain system-level financial statements for each system. However, the two systems seeking waivers are among its worst performing systems financially. The attached financials contain data from Cebridge Connections, Inc. for the years ending December 31, 2003 and December 31, 2004. As explained above, Cequel was doing business as Cebridge Connections until July 2006, when Cebridge Connections changed its operating name to Suddenlink. The financial situation of the Cequel systems that are the subject of this Petition has not improved since the financial data in Attachment A was compiled. Cequel will provide 2005-2006 financial data for these systems when such data becomes available.

Cequel's existing subscriber base in a market in which Cequel is already exposed to vigorous competition from satellite providers. Even if Cequel did increase its rates, it is highly doubtful that Cequel would ever be able to recover \$8,000 from the small, 7-subscriber system in Auburn Valley, CA.

Cequel simply is not in a position to raise rates further than is already necessary, as both systems included in this Petition continue to lose subscribers at a steady rate. *See* Attachment A (reflecting subscriber losses since 2005). Between 2005 and 2007, subscribership for the Auburn Valley system dropped from a meager 11 subscribers to only 7 subscribers. Likewise, the subscribership for Verdi plummeted 67% from 197 subscribers to 65 subscribers. The drop in the number of subscribers for the Verdi system brings it below the 100 subscriber threshold the Bureau applied in granting waivers to other cable systems in its Public Notice.⁷ Moreover, prospects for new subscribers in these communities are not promising. If Cequel does not receive waivers for these systems, it will likely have no option but to shut them down.

B. Other Entities in the Area Provide Emergency Alert Information

There are various entities in each of the communities that inform customers of national, state, and local emergencies. Radio broadcast stations, both on the FM and AM band, and TV broadcast stations serving each of the local communities are required to transmit national EAS messages, and would also likely provide coverage of state and local emergencies.⁸ Various other entities voluntarily participate in the national level EAS, including major television and cable networks.⁹

⁷ Public Notice at 2.

⁸ 47 C.F.R. § 11.11(a).

⁹ *See* 47 C.F.R. § 11.43 (2001) (identifying each of the industry entities voluntarily participating in the national level EAS).

In the event of a national emergency, Cequel's basic tier subscribers would have access to EAS alerts through local broadcast stations (the majority of what is offered on the basic service tier) and the national broadcast programming of ABC, CBS, FOX, NBC and PBS.¹⁰ For subscribers who also receive expanded basic or other tiers of service, a substantial number of the programming services would transmit national emergency alerts or otherwise provide information about national, state and local emergencies. Those sources include the cable programming networks that voluntarily participate in EAS and who transmit national EAS messages, such as The Weather Channel, ESPN, VH-1, MTV, HBO, Disney Channel, Nickelodeon, Showtime and others.¹¹

C. Emergency Risks in Each of the Communities are Localized Risks

The Cequel systems that are the subject of this waiver request are unlikely targets for a terrorist attack or other national emergency. The risks faced by these two remote communities served by Cequel's systems are predominantly localized weather-related risks, such as wind-driven wildfires.

¹⁰ See 47 C.F.R. § 11.43 (2001).

¹¹ *Id.*

III. Conclusion

Cequel continues to face enormous financial strain in bringing its smallest cable systems into compliance with the Commission's EAS requirements, particularly those systems that serve fewer than 100 customers. The granting of a 12-month waiver would enable Cequel to ascertain the most effective and cost efficient manner to bring its two smallest systems into EAS compliance, or in the alternative, to shut down or sell these systems.

Respectfully submitted,

Cequel III Communications I, LLC d/b/a
SUDDENLINK COMMUNICATIONS

By: 

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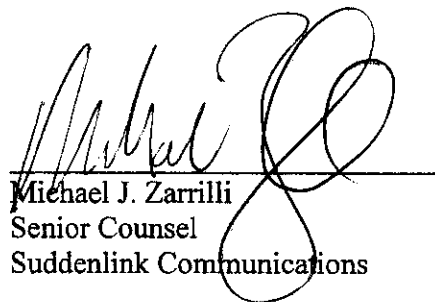
Washington, D.C. 20006

(202) 973-4200

June 29, 2007

CERTIFICATION

I, Michael J. Zarrilli, hereby certify that the statements made in the foregoing Petition for Waiver are made in good faith and are true and correct to the best of my knowledge, information and belief.



Michael J. Zarrilli
Senior Counsel
Suddenlink Communications

June 28, 2007

Attachment A

(Financial Information)

CONFIDENTIAL

Attachment B

(Subscriber Counts for Cequel Systems Seeking 12-Month Waivers)

Attachment B

Cequel Systems Seeking 12-Month Waivers

System	Number of Subscribers December 2005	Number of Subscribers June 2007
California		
Auburn Valley, CA	11	7
Nevada		
Verdi, NV	197	65